IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENARO SANCHEZ
916 Robeson Street
Reading, PA 19604

Plaintiff, NO. _____

vs. CIVIL ACTION

YUASA BATTERY, INC. c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808

Defendant.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Genaro Sanchez, by and through undersigned counsel, hereby avers as follows:

INTRODUCTION

1. Plaintiff has initiated this action to redress violations by Defendant of, *inter alia*, the Americans with Disabilities Act ("ADA" - 42 U.S.C. 12101 et seq.), the Family and Medical Leave Act ("FMLA" - 29 USC 2601 et seq.) and the Pennsylvania Human Relations Act ("PHRA"). Plaintiff was unlawfully terminated by Defendant and has suffered damages more fully described/sought herein.

¹ Plaintiff's claims under the PHRA are referenced herein for notice purposes. He is required to wait 1 full year before initiating a lawsuit from date of dual-filing with the EEOC. Plaintiff must however file his lawsuit in advance of same because of the date of issuance of her federal right-to-sue-letter. Plaintiff's PHRA claims however will virtually mirror his federal claims.

JURISDICTION AND VENUE

- 2. This Court, in accordance with 28 U.S.C. § 1331, has jurisdiction over Plaintiff's claims because this civil action arises under laws of the United States.
- 3. This Court may properly maintain personal jurisdiction over each Defendant because each Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over each Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the Supreme Court of the United States in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.
- 4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.
- 5. Plaintiff exhausted federal administrative remedies for his claims under the ADA by first dual-filing a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human Relations Commission ("PHRC") and receiving a right to sue letter mailed on or about January 15, 2021.
- 6. Plaintiff will seek leave to amend this pleading to incorporate claims under the PHRA at the end of the statutory one year waiting period required by Pennsylvania law. *See* 43 P.S. § 962(c).

PARTIES

- 7. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
 - 8. Plaintiff is an adult individual, with an address as set forth in the caption.

- 9. Defendant Yuasa Battery, Inc. ("Defendant") is a Delaware corporation with a registered agent for service of process at the above-captioned address. Defendant is also believed to have a principal place of business at 2901 Montrose Avenue Laureldale, Pennsylvania 19605 (Berks County).
- 10. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for each Defendant.

FACTUAL BACKGROUND

- 11. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 12. Plaintiff was employed by Defendant as an Assembly Line Worker from approximately June 26, 2016 until approximately September 22, 2020 when he was unlawfully terminated.
- 13. At all times relevant herein, Defendant was supervised by Third-Shift Supervisor Kevin Gass ("Gass").
- 14. In or around June and/or July 2020, Plaintiff suffered two ("2") work related injuries resulting in arm, elbow and right shoulder pain for which was still treating as of the filing date of his EEOC charge.
 - 15. Plaintiff required physical therapy for his work-related injuries.
 - 16. After each injury, Plaintiff filed a worker's compensation claim.
- 17. Plaintiff treated with Defendant's worker's compensation physicians who recommended, *inter alia*, light duty work, not lifting over ten ("10") pounds and to avoid repetitive machine work.

- 18. Plaintiff experienced nothing short of blatant discrimination and retaliation due to his work injuries and/or health conditions.
- 19. By way of example and without limitation, management began to exhibit frustration with Plaintiff's need to attend various medical appointments or if he needed limited time off to deal with his injuries.
- 20. Additionally, after each of his work-related injuries, Plaintiff continued working but was not properly accommodated for his light duty restrictions.
- 21. By way of example and without limitation, Defendant continued to require Plaintiff to perform repetitive machine work with both hands despite the fact that Plaintiff's doctor wanted him to refrain from the same for a period of time.
- 22. In or around the second week of September 2019, Plaintiff was reevaluated by his own worker's compensation physician.
- 23. Plaintiff's physician recommended that he undergo additional testing insofar as he was experiencing a lot of pain and discomfort.
- 24. The physician also indicated that Plaintiff was to continue avoiding repetitive motion work for his right elbow and shoulder for approximately a month.
- 25. Plaintiff immediately informed management who in turn expressed clear frustration for his continued request for accommodations and/or additional medical treatment.
 - 26. Plaintiff continued to work light duty until approximately September 19, 2020.
- 27. On or about September 19, 2020, Plaintiff woke up with extreme chest and back pain. He also had difficulty breathing.
- 28. Plaintiff called out of work on September 19, 2020 and informed management he was going to the emergency room.

- 29. At the emergency room, Plaintiff was given, *inter alia*, blood tests, a CAT scan and steroids for the pain he was experiencing.
 - 30. Plaintiff was told at the ER to follow up with his primary physician.
- 31. Plaintiff called out of work again on September 20, 2020 and indicated he would be seeing his primary physician on Monday September 21, 2020.
- 32. When Plaintiff was evaluated by his primary physician on or about September 21, 2020, the physician performed blood work and other tests.
- 33. The physician informed Plaintiff that his back, neck, shoulders and arm were in a constant spasm.
- 34. Plaintiff informed the physician that his workers' compensation doctor recommended additional testing for the injuries and other potential underlying medical issues.
- 35. Sometime in the evening on September 21, 2020, Plaintiff arrived at work with doctor's notes from his primary physician and the hospital.
- 36. Plaintiff was immediately sent home and told human resources ("HR") would contact him.
- 37. The next day on or about September 22, 2020, Plaintiff was called by HR and told he was being terminated for "attendance" issues despite the fact he had medical documentation to substantiate time off **and** that he had PTO time he was eligible to use.
- 38. Defendant never advised Plaintiff of his rights or eligibility under the FMLA for any of the time he took off to care for his medical conditions.
- 39. Defendant subjected Plaintiff to unlawful discrimination and retaliation in terminating his employment on or about September 22, 2020.

COUNT I <u>Violations of Family and Medical Leave Act ("FMLA")</u> (Interference & Retaliation)

- 40. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 41. Plaintiff was an eligible employee under the definitional terms of the FMLA, 29 U.S.C. § 2611(a)(i)(ii).
- 42. Plaintiff requested FMLA-qualified leave for medical reasons from Defendants with whom he had been employed for at least twelve months pursuant to the requirements of 29 U.S.C.A § 2611(2)(i).
- 43. Plaintiff had at least 1,250 hours of service with Defendants during his last full year of employment.
- 44. Defendant is believed and therefore averred to be engaged in an industry affecting commerce and employs fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to 29 U.S.C.A § 2611(4)(A)(i).
- 45. Plaintiff was entitled to receive leave pursuant to 29 U.S.C.A § 2612 (a)(1) for a total of twelve (12) work weeks of leave on a block or intermittent basis.
 - 46. Defendant failed to advise Plaintiff of his FMLA rights.
- 47. Plaintiff was terminated in close proximity to his serious health condition(s) which clearly would have entitled him to FMLA leave and/or his requests for time off which would have unquestionably been covered by the FMLA.
- 48. Defendants committed clear interference and retaliation violations of the FMLA for the reasons set forth above.

49. Plaintiff has suffered damages as set forth more fully herein.

COUNT II

Violations of the Americans with Disabilities Act "ADA" [1] Actual/Perceived/Record of Disability Discrimination; [2] Retaliation; [3] Failure to Accommodate; [4] Hostile Work Environment)

-Against All Defendants-

- 50. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 51. Plaintiff was terminated because of [1] his actual and/or perceived disabilities; [2] his record of impairment; [3] his requested accommodation(s), which constitutes unlawful retaliation.
- 52. Defendant also failed to engage in the interactive process and otherwise failed to accommodate him.
- 53. Defendant created a hostile work environment for the reasons stated above relative to his work-related injuries.
 - 54. These actions as aforesaid constitute violations of the ADA.
 - 55. Plaintiff has suffered damages as set forth more fully herein.

COUNT III Common Law Wrongful Discharge

- 56. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 57. Upon information and belief, Plaintiff was terminated in substantial part for making claims for worker's compensation benefits and/or seeking worker's compensation benefits and/or for his work-related injuries (as discussed *supra*).
- 58. It is against Pennsylvania's public policy for an employee to be terminated for making worker's compensation claims and/or seeking worker's compensation benefits. These

actions as aforesaid constitute wrongful termination in Pennsylvania. *See Shick v. Shirey*, 552 Pa. 590, 716 A.2d 1231 (1997); *Rothrock v. Rothrock Motor Sales, Inc.*, 584 Pa. 297, 883 A.2d 511, 516 (2005).

59. The temporal proximity and retaliatory animus between Plaintiff's claims for worker's compensation and his termination creates an inference that his termination was in retaliation for making such claims. These actions as aforesaid constitute wrongful termination in Pennsylvania.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

- A. Defendant is to promulgate and adhere to a policy prohibiting discrimination in the future against any employee(s);
- B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement and seniority;
- C. Plaintiff is to be awarded liquidated damages and/or punitive damages as appropriate, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;
- D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper and appropriate (including but not limited to damages for emotional distress, pain, suffering and humiliation); and
- E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

F. Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By: /s/Ari R.Karpf_

Ari R. Karpf, Esq. W. Charles Sipio, Esq. 3331 Street Rd. Bldg. 2, Ste. 128 Bensalem, PA 19020

Date: January 29, 2021

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

CIVIL ACTION

Telephone	FAX Number	E-Mail Address				
(215) 639-0801	(215) 639-4970	akarpf@karpf-law.com				
Date	Attorney-at-law	Attorney for				
1/29/2021		Plaintiff				
(f) Standard Management -	- Cases that do not fall into an	y one of the other tracks.	(X)			
the court. (See reverse management cases.)	side of this form for a detailed	explanation of special	()			
(e) Special Management –	Cases that do not fall into tracks complex and that need speci-	ks (a) through (d) that are				
(d) Asbestos – Cases involvexposure to asbestos.	ving claims for personal injury	or property damage from	()			
(c) Arbitration - Cases requ	uired to be designated for arbit	ration under Local Civil Rule 53.2.	()			
(b) Social Security - Cases and Human Services de	requesting review of a decision nying plaintiff Social Security	on of the Secretary of Health Benefits.	()			
(a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255.						
SELECT ONE OF THE F	OLLOWING CASE MANA	GEMENT TRACKS:				
plaintiff shall complete a Ca filing the complaint and serv side of this form.) In the designation, that defendant the plaintiff and all other pa	ase Management Track Design we a copy on all defendants. (So event that a defendant does n shall, with its first appearance	Reduction Plan of this court, couns nation Form in all civil cases at the time § 1:03 of the plan set forth on the rest agree with the plaintiff regarding, submit to the clerk of court and seruck Designation Form specifying the ned.	me of everse g said ve on			
Yuasa Batter	ry, Inc.	NO.				
Genaro Sanci v.	nez :					

(Civ. 660) 10/02

Case 5:21-cv-00430nt Process distriled Od/29/21 Page 11 of 12 for the eastern district of Pennsylvania

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 916 Robeson Street, Reading, PA 19604					
Address of Defendant: <u>c/o Corporation Service Company located at 251 Little Falls Drive, Wil</u>	lmington, DE 19808				
Place of Accident, Incident or Transaction: Defendant's place of business					
RELATED CASE, IF ANY:					
Case Number: Judge:	Date Terminated:				
Civil cases are deemed related when Yes is answered to any of the following questions:					
1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?	Yes No X				
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?	Yes No X				
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court?	Yes No X				
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?	Yes No X				
I certify that, to my knowledge, the within case is is not related to any case now pending or with this court except as noted above.	thin one year previously terminated action in				
DATE: 1/29/2021	ARK2484 / 91538				
Attordey-at-Law / Pro Se Plaintiff	Attorney I.D. # (if applicable)				
CIVIL: (Place a √in one category only)					
A. Federal Question Cases: B. Diversity Jurisdiction Ca	ses:				
 □ 1. Indemnity Contract, Marine Contract, and All Other Contracts □ 2. FELA □ 1. Insurance Contract □ 2. Airplane Personal 	et and Other Contracts				
	on				
□ 3. Jones Act-Personal Injury □ 3. Assault, Defamati □ 4. Antitrust □ 4. Marine Personal Injury □ 5. Patent □ 5. Motor Vehicle Personal Injury □ 6. Labor-Management Relations □ 6. Other Personal Injury ▼ 7. Civil Rights □ 7. Products Liability					
6. Labor-Management Relations 6. Other Personal In	jury (Please specify):				
▼ 7. Civil Rights 7. Products Liability ▼ 8. Habeas Corpus 8. Products Liability					
9. Securities Act(s) Cases 9. All other Diversity 10. Social Security Review Cases (Please specify): 11. All other Federal Question Cases (Please specify):					
(Tease specify).					
ARBITRATION CERTIFICATION	on anhibunging)				
(The effect of this certification is to remove the case from eligibility fo	r arburation.)				
I, Ari R. Karpf , counsel of record or pro se plaintiff, do hereby certify:					
Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:					
Relief other than monetary damages is sought.					
DATE:	ARK2484 / 91538				
Atforney-at-Law / Pro Se Plaintiff NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.	Attorney I.D. # (if applicable)				

Case 5:21-cv-00430 Document 1 Filed 01/29/21 Page 12 of 12 CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil d	locket sheet. (SEE INSTRUC	TIONS ON NEXT PAGE O	F THIS FOR	RM.)	•		
I. (a) PLAINTIFFS				DEFENDANTS			
SANCHEZ, GENARO (b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)				YUASA BATTERY, INC.			
			County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.				
(c) Attorneys (Firm Name, Karpf, Karpf & Cerutti, Suite 128, Bensalem, PA		d, Two Greenwood		Attorneys (If Known)			
II. BASIS OF JURISD	ICTION (Place an "X" in O	ne Box Only)			RINCIPAL PARTIES	(Place an "X" in One Box for Plaintif	
1 U.S. Government Plaintiff	X 3 Federal Question (U.S. Government	Not a Party)		(For Diversity Cases Only) Pron of This State	FF DEF 1 Incorporated or Pri of Business In		
2 U.S. Government Defendant	4 Diversity (Indicate Citizensh	ip of Parties in Item III)	Citize	en of Another State	2 2 Incorporated and P of Business In		
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IV. NATURE OF SUI		nly) DRTS	FC	ORFEITURE/PENALTY	Click here for: Nature BANKRUPTCY	of Suit Code Descriptions. OTHER STATUTES	
□ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excludes Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockholders' Suits □ 190 Other Contract □ 195 Contract Product Liability □ 196 Franchise REAL PROPERTY □ 210 Land Condemnation □ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torts to Land □ 245 Tort Product Liability □ 290 All Other Real Property	PERSONAL INJURY ' 310 Airplane ' 315 Airplane Product Liability ' 320 Assault, Libel & Slander ' 330 Federal Employers' Liability ' 340 Marine ' 345 Marine Product Liability ' 350 Motor Vehicle ' 355 Motor Vehicle Product Liability ' 360 Other Personal Injury ' 362 Personal Injury - Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations X 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	PERSONAL INJUR 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPER 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage Product Liability PRISONER PETITION Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Oth 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	RTY	LABOR 0 Other 0 Fair Labor Standards Act 0 Labor/Management Relations 0 Railway Labor Act 1 Eamily and Medical Leave Act 0 Other Labor Litigation 1 Employee Retirement Income Security Act IMMIGRATION 2 Naturalization Application 5 Other Immigration Actions	422 Appeal 28 USC 158 423 Withdrawal	375 False Claims Act 376 Qui Tam (31 USC 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes	
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VI. CAUSE OF ACTION	ON ADA (42USC12) Brief description of ca	101); FMLA (29U) nuse:	SC2601)	o not cite jurisdictional statu) Human Relations Ao			
VII. REQUESTED IN COMPLAINT:		IS A CLASS ACTION		EMAND \$		y if demanded in complaint: O: X Yes 'No	
VIII. RELATED CAS IF ANY	E(S) (See instructions):	JUDGE			DOCKET NUMBER		
DATE 1/29/2021		SIGNATURE OF AT	ORNEY	F RECORD			
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RECEIPT# A	MOUNT	APPLYING IFP		JUDGE	MAG. JU	JDGE	

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